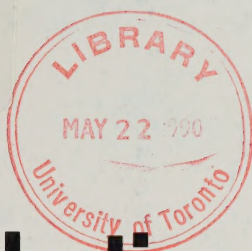



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# Introduction to Family Law





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# INTRODUCTION TO FAMILY LAW

There have been a number of recent changes to family law in Ontario. This information has been designed to give you a basic understanding of your legal rights about:

1. Child and Spousal Support
2. Custody, Access, Abduction
3. Child Protection and Adoption
4. Immigration in a Family Law Context
5. Wife Assault/Assault of Female Partners
6. Your Home and Property

These rights are generally the same whether you separate or divorce.

## Separation

A separation occurs when you and your spouse are living separately from each other. You do not need to go to court to be separated.

If you have separated or are about to separate, it is important to get legal advice. A lawyer can explain what the law says and can help you protect your rights. You and your partner should have different lawyers.

## Separation Agreements and the Family Law Act

When you separate most of your legal rights and obligations in family matters are set out in the Ontario *Family Law Act*.

You and your spouse may agree on who will live in your home; who will get custody of the children, access and support; and how to divide up your property. This becomes a *separation agreement* when it is written, witnessed and signed. To protect your legal rights, you should each have a lawyer look at the agreement before signing it. If your agreement is not in this form, you will not be able to enforce it easily. Keep a copy of your agreement in a safe place.

If you and your spouse cannot agree on these matters, you may have to go to court. Ask the court or your lawyer for a copy of any court order that is made.

## Divorce

You must go to court if you want to end your marriage and be divorced. You may apply for a divorce either before or after you have settled questions about custody, access, support and property. A court can give you a divorce if your marriage has broken down *and*:

- 1) you have lived separately for at least one year,
- 2) your spouse has committed adultery or,
- 3) your spouse was mentally or physically cruel.

Once you are divorced you can remarry.

## Legal Help

If you need a lawyer you can phone the Lawyer Referral Service which is run by the Law Society of Upper Canada. This service will give you the name of a lawyer you can consult with anywhere in Ontario for up to a half hour *at no charge*. The service will let you know if the lawyer will take legal aid cases and the names of lawyers who speak various languages. In the Metropolitan Toronto Area call 947-3330 or call toll free 1-800-268-8326 from anywhere in Ontario.

If you need more than a half hour with a lawyer and you cannot afford to pay, you may be able to get *legal aid*. Call your nearest Legal Aid Office. You will have to give that office details about your financial situation.

## Interpretation Services

Where needed, the Ontario Legal Aid Plan will pay for a court interpreter in a family law matter if you have a legal aid certificate.

If you do not have legal aid, the courts will only provide interpreters in French, free of charge. You will have to pay for interpretation in any other language in a family law matter if you do not have a legal aid certificate. The only exception is for cases involving the protection of children under the *Child and Family Services Act*. In these cases, the court will pay for necessary interpreters.

The courts have a list of approved court interpreters, and you can probably find someone who can interpret in your language from this list.

## Mediation

In many areas, mediation services are available as an alternative to going to court. These services may be free as part of the court system, or they may be private businesses which charge you a fee. Mediation will often be recommended to you. It is your choice whether or not you want to mediate.

In mediation, you do not have a lawyer present. The mediator does not represent you. Therefore, before considering mediation you should talk to a lawyer to learn about your rights. You can then decide whether you will be able to negotiate well for yourself in your partner's presence. This is particularly important if you have been assaulted by your partner. In any case, if you mediate, show the agreement to your lawyer *before* you sign it.

Ontario Women's Directorate  
January, 1988.



PLEASE NOTE: THIS PACKAGE OF INFORMATION IS ONLY MEANT TO BE AN INTRODUCTION TO FAMILY LAW IN ONTARIO. IT IS NOT AN OFFICIAL TEXT OF THE LAW. THE LAW HAS MANY EXCEPTIONS AND SPECIAL RULES WHICH ARE NOT ALL DESCRIBED HERE. FOR MORE INFORMATION OR LEGAL ADVICE, PLEASE CONTACT A LAWYER OR A COMMUNITY LEGAL CLINIC.

This project has been jointly funded by the Ontario Women's Directorate, The Ministry of the Attorney General and The Federal Dept. of Justice.

## **1. CHILD AND SPOUSAL SUPPORT AND ENFORCEMENT**

### **SPOUSAL SUPPORT**

When you separate, the law expects you to pay for your own needs to the best of your ability. If you cannot, your spouse must pay for your needs to the extent that he or she can afford it. These rules apply no matter who leaves the home and no matter what the reason was for your separation.

It will cost more to set up two homes after separation than it costs to run one home. If support payments are not enough for you to live on and your spouse cannot pay any more money, family benefits or general welfare may be available from the government.

### **Can I get support if I am not married**

You can get spousal support if you are not married *and*:

- 1) You lived with someone of the opposite sex for at least three years;                      – or –
- 2) you and your partner of the opposite sex had or adopted a child together, and lived together in a relationship of some permanence.

### **CHILD SUPPORT**

Both parents must contribute as much as they are able for their children's needs. This is true even if a parent is not living with the child or visiting the child.

### **Do I have to go to court to get support for myself or the children?**

You or your lawyer can work out an agreement with your spouse about support for yourself and the children. The amount should meet your own and your children's needs. If you and your spouse cannot agree, you can apply to the court and a judge will decide how much you and/or your child need and how much your spouse is able to pay and for how long. It may take some time until the judge makes a final decision. The court can therefore order temporary or *interim support*.

You must apply to the court for support for yourself within two years after separation. There is no time limit for child support applications.

### **How much support will I get?**

The amount of support is based on what you and your child need to live on and how much your spouse is able to pay.

Both spouses *must* give the court all information about their income and property. If you do not go to court, get copies of your spouse's bank accounts, income tax returns, business records and other financial records. In deciding the amount of support, you or a judge should look at:

- your needs, age, health;
- your employment opportunities;
- your spouse's income, debts, or other support payments;
- your standard of living before you separated;
- childcare needs and costs;
- how much you need to become self-supporting; and
- how long you will need support for.

A support order *may* state that the support will end after a few years. You may be expected to try to become financially independent during that time. This is because the law expects you to pay for your own needs to the best of your ability. *If* you are able, consider how you can get into the workforce or how you can go to school to get more education or job training.

### **Can a support agreement or order be changed?**

If your child's, your spouse's or your own situation changes, you or your spouse can agree to change the amount of support. If you cannot agree, you can go to court and ask to have an order or agreement changed, or ended. Courts do not change support arrangements easily unless both sides agree.

### **How can I get my spouse to pay?**

The *Support and Custody Enforcement Program* will automatically enforce a court order for support once it is filed in one of its offices. It will also enforce agreements for support if *you* file the agreement in their office. The enforcement service is free. Enforcement officers can help find your spouse or partner if he or she has disappeared. They can also get court orders seizing part of your spouse's wages, bank account, or property.

A free booklet explaining more about this program and how to file your order or agreement is available from the Ministry of the Attorney General for Ontario.

## 2. CUSTODY, ACCESS, ABDUCTION

### CUSTODY

Both the father and the mother have an equal right to the custody of their child, whether they are married or not. Before or after a separation, parents can try to agree about who will have custody. If they cannot agree, a court will decide where the child will live. The court will look at a number of factors like the child's relationship with each parent, where the child wants to live, and what each parent's plans are for the child. The court will then decide what is best for the child.

Once an order or agreement is made, get a copy and keep it in a safe place.

### What kinds of custody are there?

The most common kind of custody is called *sole custody*. This means that the child usually lives with one parent who can make all of the major decisions about the child's life (eg. education, religion, health, etc.).

A parent will have sole custody without an agreement or court order if she or he takes care of the child for some time, and the other parent consents or does nothing about changing custody during that time. The parent with the child is said to have *de facto* custody. This is important because judges are reluctant to change the custody of a child who has lived with one parent for some time, and who is doing well with that parent.

There are also joint custody arrangements. *Joint legal custody* means the child lives with one parent most of the time but both parents make the major decisions about the child's life. *Joint physical custody* means that the child lives with both parents on an equal or nearly equal time basis and both parents make the major decisions. Joint custody arrangements can only work where both parents can communicate and make decisions together.

### ACCESS (VISITING RIGHTS)

The parent who does not live with the child can usually get access or visiting rights. Parents can try to agree about access. If you cannot agree your lawyer may be able to help or you can go to court. Courts decide access on the basis of what is best for the child. Access is only denied in rare situations when the child's well-being would be at risk.

If an access order or agreement is not obeyed, you can have it enforced by the court. Child support must be paid even if you are not seeing the child. The reverse is also true.



In general, the parent with custody can decide where to live with the child. A court can order the parent with custody to stay within a certain area so that the access parent can see the child. The court can also make either parent give his or her passport to the court to make sure that the child is not removed from Canada if that is best for the child.

### **Can custody and access arrangements be changed?**

Parents can agree to change custody or access arrangements at any time. If one parent wants to make a change and the other does not, a court can decide if the change is best for the child. Custody and access orders are never final. If the child is doing well, the courts do not usually change custody or access.

### **ABDUCTION**

Taking a child from the person who has custody is a serious crime. A person who does this can be sent to jail, even if that person is a parent.

If you have a court order or agreement that gives you custody, call the police. The *Support and Custody Enforcement Office* can also help you if they have a copy of the order or agreement. There is no charge for their work but you may have to pay their expenses.

If you do not have a court order or an agreement giving you custody and your child is taken away by the other parent, call the police immediately. Give them any information you have about your child and the parent.

## **3. CHILD PROTECTION AND ADOPTION**

### **CHILD PROTECTION**

Children's Aid Societies are set up to protect children who are being neglected or abused by their parents or caregivers. The societies investigate every complaint received. The law says that some professionals must report any suspected child abuse. If a society worker contacts you about your child you should get legal advice as soon as possible. These societies have the power to take your child from you in some circumstances.

Depending on the ethnic or religious background of the parents, a family may become involved with the Catholic Children's Aid Society, the Jewish Family and Child Services, a Native child protection agency, or the Children's Aid Society.

If a society worker feels that you are abusing or neglecting a child, the society can go to court. If this happens you should get a lawyer to represent you. If you cannot afford to pay for a lawyer, you may be able to get legal aid. The court will decide if the child needs protection. If so, the court can order that your care of the child be supervised by the society or the child can be ordered into the society's care, either temporarily or permanently.

### **Temporary Care Agreements**

A society sometimes takes a child into care with the consent of the parent. A parent who is unable to cope with a child due to some family problem such as illness, can contact the society for help. The society and parent would then sign a *temporary care agreement*, and the society would care for the child until the parent is better able to cope. You should probably only use the society in this way as a last resort. Look first for help from family, friends and community agencies. You should also try to get independent legal advice *before* you sign such an agreement, because it might become difficult to have your child returned to you if the society worker does not feel that you are ready to care for the child.

### **ADOPTIONS**

When a child is adopted in Ontario, he or she becomes the child of the adopting person or people. The birth parents usually give up all rights to a relationship with the child.

Unless the adopting parent is a relative or step-parent, a homestudy is done to see if the adopting parent's family and home are suitable. The child is then placed with the adopting parent(s) for six months. During this time there are three home visits by a social worker. Afterwards there is a court hearing and if everything has gone well, the adoption order is granted.

### **Consent**

The birth mother must give her consent to an adoption unless the custody of the child has been permanently given to the province (Crown Wardship) and the mother has lost all rights to a relationship with the child during a child protection hearing. She cannot give her consent to the adoption before the child is 7 days old. The birth mother also has 21 days from the date she consents, to change her mind for any reason. After that date, she can only change her mind with the permission of the court, and if the child has not been placed for adoption. This permission is not easily obtained.

This child's father's consent is needed if:

- 1) he has admitted that he was the father of the child, or
- 2) he was married to the mother, or
- 3) he has treated the child as his own, or
- 4) if a court has declared that he is the father.

A court may decide that it is in the child's best interest not to get the father's consent.

Birth parents and adopted children over the age of 18 can apply to the Adoption Disclosure Registry if they want to find out about each other or about siblings. For further information contact the Ministry of Community and Social Services Adoption Disclosure Co-ordinator at (416) 963-0709.

## **4. IMMIGRATION IN A FAMILY LAW CONTEXT**

### **The Sponsored Fiancé**

If a person comes to Canada to marry either a Canadian citizen or a permanent resident (landed immigrant), the Department of Immigration often requires the couple to marry within three months. If they do not marry, the person who came is usually deported even if it was not her or his fault that they did not marry.

### **Breakdown of Sponsorship**

If a woman has landed immigrant status before she separates from her husband, and he withdraws his sponsorship, she is in a good position with regard to her immigration status. This is also true if the wife sponsors her husband and then withdraws her sponsorship.

If a woman has not obtained her landed immigrant status when her husband withdraws his sponsorship, she is at real risk of being deported. This is also true if the wife sponsors her husband and then withdraws her sponsorship.

If a woman leaves her husband due to her husband's violence, she may be considered for landed immigrant status on compassionate grounds. This is up to the Department of Immigration. The woman would be assessed on the point system just as any other person who wanted to immigrate to Canada would be.

### **Dependent Family Member**

If the main breadwinner in a family is being deported, all the dependent family members can be deported too.

### **Legal Help**

If you find yourself in any of these situations, get legal advice as soon as possible. If you cannot afford to pay a lawyer, go to legal aid, or to your local community legal clinic.

## 5. WIFE ASSAULT/ASSAULT OF FEMALE PARTNERS

Violence in the home is widespread. It happens in families of all educational, financial, ethnic and religious backgrounds. It is against the law for a man to hit, kick, slap, push, threaten or abuse a woman in certain other ways, whether he is married to her or not. A man who assaults his partner can be arrested, charged and jailed.

Assaulting a wife or female partner hurts everyone. It is not a private matter. A battered woman does not cause the violence. Help is available to stop it. If your male partner is violent towards you and you have to leave your home, you are not deserting him. You are not giving up any legal rights to your home or family.

### I. Who should I tell?

#### **The Police**

If your husband or partner is or has been abusing you, you can call the police and tell them a man is abusing you. When they arrive, tell them what happened. Tell them about *all* earlier assaults. The police have a *duty* to charge the abuser if they have reason to believe that an assault has taken place. The police do not have to have seen the assault to lay charges. Your word alone can be enough to lay a charge and go to court.

A government lawyer (a Crown Attorney) will take charge of a criminal court case. *Only* the Crown can withdraw the charge, not you. You may have to give evidence against your husband or partner in court. Research has shown that in many cases laying charges reduces future violence.

#### **Your Doctor**

Go to your doctor whether or not you call the police. It is important that you see a doctor as soon as possible after the assault. You should be open with your doctor about the violence because you may need this proof later. You may also need treatment. If you do not have a family doctor, you can go to a hospital emergency ward. Get the name of the doctor who examines you.

#### **Friends, Family & Neighbours**

Go to friends, family and neighbours you trust and tell them. Ask them to call the police if they hear a fight. If you know when the violence will take place, go to their place before it happens. If you have to leave home, ask if you can stay with them until you find a place of your own.



## **Women's Shelters**

Shelters are another option for women and their children. If you don't know the name or phone number of the shelter in your area, call directory assistance and ask for *Wife Assault Helpline*. Shelter workers are very experienced with wife assault, and they can help you. They also have child care workers who can help you to help your children deal with the violence.

### **II. What do I take with me if I leave?**

If you have to leave home in a hurry, here are *some* things to remember to take with you:

money; keys, birth certificates and passports for yourself and the children; immigration papers; your address book; phone numbers; a child's favourite toy to make him or her feel more secure.

If you have time to prepare, save some money and take what you own. This means what you paid for or what you have been given. You can take half of a joint bank account.

Here is a list of some important papers which you should take if you have time:

receipts for purchases; income tax returns; bank books or statements; pay stubs; bills; business records; etc.

Copies of similar papers of your husband's or partner's would also be useful especially if you may have difficulty getting this information later.

If you leave home and want to go back to get your things or the children, you should ask the police to go with you if you are afraid of more violence. You can do this with or without a court order provided that there is no court order which says you cannot return to the home or take your child or property.

### **III. How do I get money?**

If you have no money and no job, you may be able to get emergency welfare until you can get support from your partner or family benefits from the government. If you are living in a shelter, your room and board will be supplied at no charge.

### **IV. What legal options do I have?**

You should get legal advice as soon as you can so that you know what your legal rights are. Legal Aid is available for anyone who cannot afford a lawyer no matter what your partner's income is. Legal Aid also has a special programme so that you can get immediate legal advice if you are a victim of wife assault no matter what your financial situation is. You can get information about this programme from Legal Aid or from women's shelters.

## Leaving and Children

If you leave your home for safety, you can take your children with you. Both parents have an equal right to the custody of their children. This only changes when a court order or separation agreement says one of the parents no longer has custody. If you must leave your home without your children, you do not lose your legal right to have them with you until a court order or agreement states otherwise. However, you do need to apply to a court as quickly as possible for a custody order.

## Criminal Charges

If you are assaulted and for some reason the police do not lay a charge, you should take his or her badge number and call the local Chief of Police or the Crown Attorney's office. If there is a women's shelter or clinic set up to help assaulted women in your town, someone there may be able to help you get the police to lay the charge against your husband or partner.

If you are afraid, you can also go to a Justice of the Peace to ask for an order requiring your partner to keep the peace for up to 12 months. This order is often called a *peace bond*. You do not have to move away from home before you lay these charges. You and your partner would then have to go to court where you could have to give evidence. A Crown Attorney can help you with the court case. All criminal courts have translators. Ask for a translator if you need one. Ask for a copy of any order the court makes.

## Exclusive Possession Orders

Staying in your home may not be safe for you. If it is and you are married, you can apply to the court for an order saying that you can stay in the home and that your husband must leave. This is called an *order for exclusive possession*. You will likely need a lawyer to get this. The judge must consider any violence as an important fact in making these orders. If you do get an order for exclusive possession ask for a copy of it. The police can help to make your husband obey this order. Consider getting your locks changed immediately.

## Restraining Orders

If your husband or partner will not stay away from you, you can apply to the court for an order to stop your partner from bothering you or the children at home, work, school, or anywhere else. This is called a *restraining order*. You do not have to be married to obtain this order. If it is an emergency, you may apply for the order without notice to your partner. Ask for a copy of this order. The police can help make your husband obey this order.

### **Disobeying Court Orders**

If your husband or partner disobeys an exclusive possession or restraining order, you should call the police. If you have a copy of the order it will help the police to lay charges. Make copies of the order and carry one with you at all times in case your partner harasses you at work or on the street.

### **Compensation for Injuries**

If you have been injured by an assault by your husband or partner, you can apply for compensation to the Criminal Injuries Compensation Board. Your partner does not have to be convicted of a crime for you to get compensation. You just have to prove the assault and the injury. Shelters or your lawyer can help you make these applications.

### **V. What about getting another home?**

If you need long-term housing, the Ontario Housing Corporation gives priority on their waiting list to women who have been assaulted by their husbands or partners, and who want to separate permanently. Call a shelter or the Ontario Housing Corporation for more information.

## **6. YOUR HOME AND PROPERTY**

### **UNMARRIED COUPLES**

Unmarried couples have a right to take their own property with them when they separate.

You may also have a right to some of your partner's property value in a limited number of situations. See a lawyer or go to a community legal clinic for more information.

### **MARRIED COUPLES**

#### **When you separate**

When a married couple separates, the law generally gives the husband and the wife an equal share of the value of the property they have collected during their marriage. The property itself is not divided but rather its value is divided between the spouses. This law does not apply to unmarried couples or, in most cases, to married couples before they separate. Here is how this is done.

Every piece of property is given a value. This value is the amount the item was worth on the day the couple separated. The value of all the property belonging to the wife is then added up and compared to that of the husband. Almost everything is included, such as bank accounts, furniture, land, appliances, tools, pensions, stocks, bonds, cars, businesses, etc. Only a few things are not added in. These include property brought into the marriage, gifts and inheritances. The value of the matrimonial home is always included no matter when or how the couple got it.

After the wife's and husband's total property values are added up and compared, the person with the higher property value must then pay one half of the difference to the other. In this way, they both usually end up with the same property value.

Here is an example.

Tom bought a car before he married Sue. During the marriage, Tom inherited a gold watch, bought a snow blower, and began a snow removal business. During the marriage, Sue bought a fridge, Canada Savings Bonds and saved \$1,000 in her bank account. They separated on June 30, 1987. Here is how the rule works:

Tom's Property Value on June 30		Sue's Property Value on June 30	
Snow business	\$4,500	Fridge	\$500
Snow blower	500	Savings Bonds	500
		Bank acc't	1,000
TOTAL:	<u>\$5,000</u>		<u>\$2,000</u>

Tom's car was not property which Tom got during the marriage and it is therefore not added into his total. Tom's gold watch also not added in because it was an inheritance.

The difference between Tom and Sue's total property values is \$5,000 minus \$2,000 which is \$3,000. Tom must therefore pay Sue \$1,500 in order that they both end up with \$3,500.

The property itself is not always divided. For example, Tom probably would not have to give Sue half of his business. The property also does not always have to be sold in order to make the shares equal. In the example, Tom might be able to get a bank loan and pay Sue \$1,500 in cash instead of selling the business.

If a married couple has debts when they separate, they each can usually subtract the debts from each of their total property values. Here is how this works.



If Tom owed \$2,500 to the bank for his snow business and Sue owed \$300 on her credit card, these debts could be subtracted as follows:

Tom's Total Value		Sue's Total Value	
Property	\$5,000	Property	\$2,000
Debts	-2,500	Debts	- 300
	<u>\$2,500</u>		<u>\$1,700</u>

Tom's total value of \$2,500 is \$800 more than Sue's total value. Tom would then have to pay \$400 and their shares would both be \$2,100. Sue should also check to see if she signed for Tom's loan. If she did, Sue should not agree to a property division until Tom and the bank remove Sue's name from the loan.

You and your spouse can try to agree on how you will divide your property. Remember you are entitled to an equal share. If you cannot agree you can each ask a lawyer to help. You can also go to court and a judge will decide using the above rules. You must apply to the court within 6 years of separation or within 2 years of divorce, whichever is earlier, in order to use these rules.

You can make a written and witnessed agreement with your husband not to use this law either before or after you marry or separate. You should make sure that you get independent legal advice *before* you do this. The courts are very reluctant to change such agreements, even if they later seem unfair.

### **When your spouse dies**

When your spouse dies you will have the choice of taking what is given to you under the will, *or* you may use the property rules set out above. If there is no will, you may also apply these property rules, *or* you may take the share that the law gives you when there is no will. You should choose the greater amount. A lawyer can help you to make the best choice.

### **When you are married and not separating**

If you are afraid that all of your spouse's property may disappear or be wasted due to his or her actions, you may apply to the court for your share of the value of your spouse's property without separating. This is intended for situations where, because of illness or very old age, your spouse is no longer capable of making decisions about his or her property or business. If you do apply for your share, neither you nor your spouse may apply again for a share of the property, even if you later separate, or if one of you dies.

## THE MATRIMONIAL HOME

The matrimonial home is treated differently than any other type of property in family law. Each spouse has an equal right to live in the matrimonial home after separation no matter whose name is on the deed or lease. This rule *only* applies to married couples.

### What is the matrimonial home?

The matrimonial home is the place where the couple generally lived together before they separated. It can be a rented house or apartment with the lease in your name or your spouse's or both of your names. It can also be a condominium or house that you or your spouse or you both own.

### How do you get possession?

You may be able to agree with your spouse about who will stay in the home after you separate. If you cannot agree, you can each get a lawyer to help you work it out or you can go to court.

A judge can order that one spouse stay in the home and that the other leave. This order is called an order for *exclusive possession*. Before making this order a judge must consider things such as the needs of the children, the income of the spouses, any incidents of family violence, and the availability of alternative accommodation. If you get an order for exclusive possession ask the court or your lawyer for a copy of the order. Once the court makes this order you can get help from the police to get your spouse out and keep him away. It is a serious provincial offence for your spouse to disobey an order for exclusive possession. You can also use the free Support and Custody Enforcement Program to make your spouse obey this court order. For more information contact the Support and Custody Enforcement Office nearest you.

### Selling your home

Whether you and your husband are living together or are separated, your matrimonial home cannot be sold or mortgaged without your consent unless a court orders it.

A judge can make an order which says that the matrimonial home must be sold either right away or after you or your spouse have used it for a period of time. This is sometimes done when the value of your properties is divided as set out above.





ENGLISH



Ian Scott  
Attorney General  
for Ontario

Mavis Wilson  
Minister  
Responsible for  
Women's Issues

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